

**FRIED, FRANK, HARRIS, SHRIVER**

**& JACOBSON LLP**

One New York Plaza

New York, NY 10004

212-859-8000

Gary Kaplan, Esq.

Melissa Weiss, Esq.

*Counsel for FMR LLC & Affiliates*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

In re:	.	Case No. 08-13555 (JMP)
LEHMAN BROTHERS HOLDINGS INC., <u>et al.</u> ,	.	Chapter 11
	.	(Jointly Administered)
Debtor.	.	

---

**LIMITED OBJECTION OF FMR LLC TO PROPOSED CURE  
AMOUNTS AND ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS**

---

TO THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE:

FMR LLC and Affiliates, d/b/a Fidelity Investments (“Fidelity”), for its limited objection (the “Limited Objection”) to the Debtors’ stated cure amounts and the assumption and assignment of its contracts and unexpired leases, respectfully state as follows:

**Background**

1. On September 15, 2008 (the “Petition Date”), Lehman Brothers Holdings Inc. (“LBHI”) commenced a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On September 16, 2008, LB 745 LLC (“LB 745,” collectively with LBHI, the “Debtors”) commenced a case under chapter 11 of the Bankruptcy Code. The Debtors

continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 17, 2008, the Debtors filed the Debtors' Motion to (A) Schedule a Sale Hearing; (B) Establish Sale Procedures; (C) Approve a Break-up Fee; and (D) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts Relating to the Purchased Assets (the "Sale Procedures Motion") including an Asset Purchase Agreement (the "Asset Purchase Agreement") that contemplates a sale of certain of the Debtors' assets to Barclays Capital Inc. ("Barclays"). On September 17, 2008, an order was entered approving the Sale Procedures Motion and a hearing to approve the sale was scheduled for September 19, 2008.

3. At approximately 1:00 a.m. this morning, a schedule of executory contracts and unexpired leases that the Debtors plan to assume and assign to Barclays pursuant to an Asset Purchase Agreement was posted on the Debtors' case information website (the "Schedules"). Four contracts with Fidelity were listed in the Schedule of executory contracts and unexpired leases that the Debtors plan to assume and assign to Barclays. However, no information was provided with respect to the nature of the contracts. In addition, two of the contracts are listed with cure amounts of \$0.00, one was listed with \$46,454.73 and the other with \$49,264.70.

#### **Limited Objection**

4. Fidelity has had insufficient time and information to determine which contracts are currently being assumed and assigned, the amounts necessary to cure any defaults under the contracts and whether the proposed assumption and assignment of the contracts satisfy Section 365 of the Bankruptcy Code. Fidelity recognizes the exigent circumstances present in

this case and understands the need for the sale transaction to close in an expeditious timeframe. Contract counterparties, however, cannot be deprived of their right to due process. By providing the counterparties with less than one business day notice of the contracts being assumed and assigned and the cure amounts, the Debtors have provided Fidelity – a huge financial services institution with numerous affiliates and contractual relationships – with insufficient time and notice to figure out which contracts are being referred to in the Schedule and whether the cure amounts are correct. Accordingly, Fidelity objects to the assumption and assignment of its contracts and the asserted cure amounts and reserves all of its rights.

**No Waiver**

5. By submitting this Limited Objection to the Proposed Cure Amounts, Fidelity does not waive and hereby reserves any and all objections to any proposed assumption and assignment of the contracts by the Debtors and expressly reserves their rights to amend, supplement and/or modify this Limited Objection for any reason.

**WHEREFORE**, for the foregoing reasons, the Court should not approve the assumption and assignment of the Fidelity contracts.

Dated: New York, New York  
September 19, 2008

Respectfully submitted,

/s/ Gary Kaplan

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
Gary Kaplan, Esq.  
Melissa Weiss, Esq.  
One New York Plaza  
New York, NY 10004  
Telephone: (212) 859-8000  
Facsimile: (212) 859-4000  
Counsel for FMR LLC & Affiliates